

EXHIBIT K

Exhibit G

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ROBERT H. BELL

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AKIRO LLC,

Plaintiff.

V.

HOUSE OF CHEATHAM, INC., and
ROBERT H. BELL,

Defendants

Case No. 12-CV-5775 (JSR)

EXPERT REPORT SUBMITTED BY DR. BRUCE ISAACSON

1 1. I have been retained by attorneys at the law firm of Gordon & Rees in the above
2 litigation. This report provides the results of a confusion survey I conducted measuring whether
3 relevant consumers are likely to believe that hair care products from Aunt Jackie's come from, or
4 are somehow connected to, Miss Jessie's.

5 2. The statements herein, except as otherwise stated, are based on my personal knowledge; I
6 have formed the opinions expressed based on my consideration of the information I have
7 reviewed in this matter, my expertise, and my experience. I reserve the right to supplement this
8 report in light of the ongoing discovery in this matter.
9

10 OVERVIEW OF THE CONFUSION SURVEY

11 3. My confusion survey used an Eveready format, in which respondents are exposed to a
12 junior mark to see whether it is confused with a well-known senior mark. In my confusion
13 survey, respondents saw either a bottle of Aunt Jackie's "Curl La La" Defining Curl Custard or
14 Aunt Jackie's "Knot On My Watch" Instant Detangling Therapy, and were then asked questions
15 to see whether they confused the Aunt Jackie's product as coming from or somehow connected to
16 Miss Jessie's.

17 4. Separate groups of respondents saw one of two control products, which were "Curl
18 Defining Cream" from Jane Carter Solution, or "The Great Detangler" from Taliah Waajid. The
19 two controls were selected as similar products, made by companies that have names that sound
20 like people, and targeted at the same types of consumers as Aunt Jackie's, but without the
21 elements identified in the Complaint as objectionable to Miss Jessie's.

22 5. The survey interviewed representative women who, among other criteria, use curl defining
23 creams or hair detanglers at least weekly, and plan to purchase those products within the next 90
24 days. Each respondent saw one hair care product, and then answered a series of questions which
25 measured different types of confusion. The survey was consistent with generally accepted
26 principles for Eveready studies and for litigation surveys.

27 6. As described in this report, the survey provides three measures for confusion:
28

- 1 i. Confusion as to Source: The survey asked respondents who makes the hair care
2 product they saw in the interview. The survey also asked respondents whether they
3 are aware of any other products or brands put out by the company or person who
4 makes that product; those answering yes were asked what products or brands are
5 put out by that company or person.
- 6 ii. Confusion as to Sponsorship or Approval: The survey asked respondents whether
7 they think that whoever makes that product is sponsored or approved by another
8 company or person. Those answering yes were asked what company or person
9 sponsored or approved whoever makes the product they were shown.
- 10 iii. All Measured Confusion: All measured confusion provides a sum for confusion as
11 to source and as to sponsorship or approval.

12 7. Confusion between Aunt Jackie's and Miss Jessie's was low for all products measured.

13 Counting all questions in the survey, only 1.8% of respondents were confused between Aunt
14 Jackie's Curl La La and Miss Jessie's. Similarly, only 0.9% of respondents were confused
15 between Aunt Jackie's Knot On My Watch and Miss Jessie's. There was no confusion between
16 either of the control products and Miss Jessie's.

17 8. After reviewing certain background information, I will discuss the survey and my findings
18 in detail.

19
20 MY QUALIFICATIONS

21 9. I am the owner and President of MMR Strategy Group ("MMR"), a marketing research
22 and consulting firm, and am an expert in research, surveys, and marketing.

23 10. For approximately 35 years,¹ MMR has provided marketing research and consulting,
24 consisting primarily of the design, execution, and analysis of thousands of surveys, as well as
25 expertise related to marketing and strategy. Our experience includes many surveys used in
26 intellectual property litigation and false advertising matters. Our clients have included well-
27 known organizations, such as:

28 ¹ Until approximately November, 2009, the firm was known as Marylander Marketing Research.

- 1 □ Farmers Insurance Group
- 2 □ Goodyear Tire & Rubber Company
- 3 □ Cigna Health Insurance
- 4 □ Several regions of the American Automobile Association
- 5 □ Nestlé USA, Inc.
- 6 □ Smart & Final Stores

7 11. In addition, over our history, my firm has served such well-known organizations as
8 Alberto-Culver, Hewlett-Packard, Ore-Ida Foods, The Hollywood Bowl, the UCLA School of
9 Public Health, Universal Studios, Denny's, Jack in the Box, and many other organizations,
10 encompassing thousands of studies.

11 12. My firm's practice, and my personal research and consulting activities, include extensive
12 activities related to retailers and consumer products. My firm and I both have many years of
13 experience in these areas, encompassing many hundreds of studies.

14 13. I received a Bachelor of Science degree in engineering from the Technological Institute at
15 Northwestern University in 1985, and Master of Business Administration and Doctor of Business
16 Administration degrees from the Harvard Graduate School of Business Administration in 1991
17 and 1996. At Harvard, I received my MBA with highest distinction as a Baker Scholar and was a
18 Dean's Doctoral Fellow, writing publications on marketing and strategy, including best-selling
19 teaching materials.

20 14. I have taught marketing and strategy for executive groups and executive MBA programs,
21 and, for my research, I have won awards from institutions including The Institute for the Study of
22 Business Markets at Penn State University and Harvard University.

23 15. In terms of professional experience, I have been a marketing and strategy consultant at
24 The Boston Consulting Group, Senior Vice President at a publicly traded data processing
25 company that is now a division of Intuit, Division President at a media services company, and
26 Vice President responsible for marketing and strategy at a national financial services company. I
27 also served as the West Coast Practice Leader of Monitor Executive Development, a division of
28 Monitor Group, an international strategy consulting firm, where my responsibilities included

1 developing curriculum and serving as lead faculty for executive education programs in marketing
2 and strategy.

3 16. I am a member of the American Marketing Association and the Marketing Research
4 Association. My firm is a member of the Council of American Survey Research Organizations
5 and the International Trademark Association. I am also on the editorial board of the *Journal of*
6 *Business-to-Business Marketing*, and am a member of *The Trademark Reporter* Committee at the
7 International Trademark Association. I regularly consult with clients regarding marketing,
8 research, and strategy, and also address conferences and groups on the same issues. My public
9 speaking includes addressing law firms and bar associations on the use of research and surveys in
10 litigation. I have authored or co-authored articles published in the *Intellectual Property Law*
11 *Newsletter* of the American Bar Association, Intellectual Property Law Section; *Intellectual*
12 *Property, Intellectual Property Magazine, Quirk's Marketing Research Review*, and other
13 publications.

14 17. Over my career, I have personally designed, overseen, and analyzed numerous research
15 studies. I have also provided expertise in marketing, strategy, and consumer behavior to many
16 clients in a variety of industries on topics such as consumer products, segmentation, consumer
17 behavior, and retail. A copy of my curriculum vitae and litigation expert witness experience is
18 attached as Exhibit 1.

19

20 **COMPENSATION AND MATERIALS REVIEWED**

21 18. The compensation charged by my firm in this matter includes \$60,000 for the confusion
22 survey described in this report, including all activities up to the production of an expert report.
23 After this expert report, I charge \$600 per hour, with daily rates for testimony.

24 19. For purposes of this report, I have gathered and/or reviewed a wide variety of materials,
25 including the following:

- 26 i. The Complaint filed by the Plaintiff, and the Answer filed by the Defendants.
27 ii. Marketing materials from Aunt Jackie's including a print ad, a presentation
28 entitled "The New Natural," advertising budgets, and in-person research conducted

- 1 by Aunt Jackie's on hair care habits.
- 2 iii. Emails from Aunt Jackie's providing information in response to my questions, as
3 well as emails describing the activities to develop the "Aunt Jackie's" name.
- 4 iv. Websites relevant to this matter, such as those belonging to Aunt Jackie's
5 (www.auntjackiescurlsandcoils.com), Miss Jessie's (www.missjessies.com), and
6 other companies (such as Taliah Waajid, Jane Carter Solution, Uncle Funky's
7 Daughter, Mixed Chicks, and others).
- 8 v. The results of web searches on terms such as "hair detangler," "curl defining
9 cream," "leave-in hair detangler," "hair care and Hispanic women," and other
10 terms.
- 11 vi. Products from a variety of companies, including Miss Jessie's, Aunt Jackie's, Jane
12 Carter Solution, Taliah Waajid, and others.
- 13 vii. Research on demographics from the U.S. Census Bureau, located at their
14 "American Factfinder" website (<http://factfinder2.census.gov>).
- 15 20. In addition, I consulted published literature and cases relevant to the issues and theories in
16 this matter, the most relevant of which are cited in this report. I also rely on my knowledge in
17 fields such as surveys, consumer behavior, and marketing.
- 18 21. The next section describes the confusion survey I conducted.
- 19

20 **METHODOLOGY FOR THE CONFUSION SURVEY**

- 21 22. My confusion survey measured the likelihood of confusion between hair care products
22 from Aunt Jackie's, and any product or other type of connection with Miss Jessie's. All aspects
23 of the survey were designed and carried out by me or under my supervision.
- 24 23. As mentioned earlier, my hair care study used the Eveready format, which is the preferred
25 method to test confusion versus a well-known mark. In the Complaint, the Plaintiff clearly
26 indicates that Miss Jessie's is well-known. For example:

- 27 i. Paragraph 1 describes the Miss Jessie's trademark as "famous and inherently
28 distinctive."

- 1 ii. Paragraph 2 discusses the “well-established and widely acknowledged fame of the
2 MISS JESSIE’S Mark,” as well as the “hard-earned and well-deserved good will”
3 of that mark.
- 4 iii. Paragraphs 12 through 15 review the “considerable financial investment (and other
5 valuable resources)” Miss Jessie’s has invested in marketing, advertising, and
6 promotion, including “numerous” trade shows, placement in “highly popular,
7 nationally recognized” magazines, “numerous billboards strategically placed,”
8 audio spots, and public relations. According to the Complaint, these efforts have
9 been “continuing, uninterrupted, cost-intensive and far-reaching.”
- 10 iv. Paragraphs 15 through 17 state that the Miss Jessie’s mark has “achieved national
11 fame and recognition,” been recognized by popular magazines, featured on NBC’s
12 *Today Show*, and gained a “huge and ever-increasing following and fan base.”

13 24. The wide-spread recognition described in the complaint makes an Eveready design the
14 best choice to measure confusion in this matter. As one source has stated, “With respect to
15 commercially strong marks, therefore, the Eveready format is a relevant, reliable and objective
16 test of likelihood of confusion.”² Professor McCarthy has referred to Eveready as a “now-
17 standard survey format.”³

18 25. My understanding is that four products from Aunt Jackie’s are involved in this matter:
19 “Oh So Clean!” moisturizing shampoo, “Knot On My Watch” instant detangling therapy, “In
20 Control” moisturizing conditioner, and “Curl La La” defining curl custard. My survey focused on
21 two products from Aunt Jackie’s: Curl La La curl definer and Knot On My Watch hair detangler.
22 I selected these products for the following reasons:

- 23 i. Of the four, these two have the highest sales (measured since July, 2012).

24 2 Jerre B. Swann, “Likelihood of Confusion,” in *Trademark and Deceptive Advertising Surveys: Law, Science, and Design*. By Shari Seidman Diamond and Jerre B. Swann, American Bar Association: Section of Intellectual Property Law, 2012, p. 62-63.

25 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, Fourth Edition, database updated March 2009. § 32:174, “Tests of properly conducted survey—Survey formats—Eveready confusion format”

- 1 ii. The four products include two products in bottles and two in tubs. This selection
2 includes one of each type of container.
- 3 iii. Paragraph 3 of the Complaint may reference Curl La La as the Aunt Jackie's
4 product that allegedly has a similar label design and label color as Miss Jessie's
5 Curly Pudding.
- 6 26. My confusion survey interviewed women who were representative of customers and
7 potential customers for relevant hair care products, and were qualified by these criteria:
- 8 i. Age: Respondents were interviewed in three age group, including 18 to 34 years
9 old, 35 to 54, and 55 years and older. I distributed interviews within those three
10 groups to approximately match the population of African-American women in the
11 United States.⁴
- 12 ii. Race: Aunt Jackie's estimates their customers as 90% African American, 5%
13 Hispanic, and 5% other. Of respondents interviewed, 81% identified themselves
14 as African American, 13% as Hispanic,⁵ and 7% as Caucasian. The percentages
15 add up to more than 100% because a respondent could select more than one race.
- 16 iii. Product Usage: Respondents were asked about their usage of four hair care
17 products. To qualify, respondents had to use "curl definer or curl defining cream"⁶
18 or "leave-in hair detangler"⁷ at least weekly.

19

20 ⁴ Demographic data is from the U.S. Census Bureau at their American FactFinder website at
21 <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>). The Defendants describe their
22 average consumer as women age 18-54. I included the older age group because it is possible that
23 older women may also purchase these products.

24 ⁵ As shown by Exhibit 10, a number of websites discuss the types and brands of products involved
25 in this matter as products used by Hispanic women.

26 ⁶ This phrasing was selected after considering a variety of products. For example, the Miss
27 Jessie's label refers to their curl definer as "CURLY PUDDING" and "CURL CREMES." The
28 Aunt Jackie's label calls their product "DEFINING CURL CUSTARD" and "Curl à la Crème." The
29 label for Jane Carter Solution refers to their product as "curl defining cream." The remainder
30 of this report refers to this type of product as "curl definer" or "curl defining cream."

31 ⁷ The Aunt Jackie's label refers to their product as "knot on my watch" and "INSTANT
32 DETANGLING THERAPY." The Taliah Waajid product is called "THE GREAT Detangler."
33 Some, but not all, detangling products can be rinsed-out. The phrase "leave-in" distinguishes this
34 product from other types of detangling creams and items. The remainder of this report refers to
35 this type of product as "hair detangler."

1 iv. Product Purchase: To qualify, respondents had to think they are likely to purchase
2 either curl defining cream or leave-in hair detangler in the next 90 days.

3 v. Occupation: Respondents could not work in any occupations that would give them
4 unusual knowledge, such as advertising or public relations, marketing research, or
5 a company that produces or distributes hair care products.

6 27. Respondents were also qualified along other criteria, such as not participating in any
7 surveys about hair care during the past three months, and having their eyeglasses or contact lenses
8 if they normally wear them to shop.

9 28. Respondents qualified for the survey on curl definer if, in addition to the other qualifying
10 criteria, they used curl definer at least weekly and expected to purchase it in the next 90 days.
11 Similarly, respondents qualified for the survey on hair detangler if, in addition to the other
12 criteria, they used hair detangler at least weekly and expected to purchase it in the next 90 days.

13 29. The confusion survey was conducted in 13 interview facilities, all located in shopping
14 malls throughout the United States. The percentage of interviews in each region of the United
15 States approximately matched the percentage of the total population of African-American women
16 18 years or older represented by that region.

17 30. In research such as this, a control product is used to remove what Professor McCarthy
18 calls “general background noise.”⁸ Responses to surveys may be affected by factors such as
19 respondent’s pre-existing impressions, general expectations, or plain guessing; a control allows
20 the researcher to remove the influence of such factors.⁹

21 31. A control product is typically designed to be similar to the test product, but to remove
22 elements under dispute so their effect can be measured. For the Curl La La product, I selected as
23 a control a product called “Curl Defining Cream” from Jane Carter Solution. For Knot On My
24 Watch, I selected as a control a product called “The Great Detangler” from Talia Waajid. The

25
26 ⁸ *McCarthy on Trademarks and Unfair Competition*, by J. Thomas McCarthy, updated March,
2009, 32:187.

27 ⁹ Shari Seidman Diamond, “Reference Guide on Survey Research” from *Reference Manual on*
28 *Scientific Evidence*, 3rd Edition, Federal Judicial Center, National Research Council, 2011, page
398.

two controls¹⁰ have numerous similarities to the matched Aunt Jackie's test products:

- i. Product: Both controls are the same types of products in the same types of containers as the matched Aunt Jackie's products.
 - ii. Companies: Like Aunt Jackie's and Miss Jessie's, both controls are from companies that have names that sound like individual people. Also, both are from companies identified by management at Aunt Jackie's as competitors.
 - iii. Graphics: Like Aunt Jackie's, the two controls feature label designs with relatively simple and clean graphics.
 - iv. Marketing: Like Aunt Jackie's, the controls feature African-American women in their marketing, and are marketed for natural hair.

11 | 32. Exhibit 2 provides pictures of the test products and the control products.

12 33. My confusion survey used a mall-intercept format, where interviewers with paper-and-
13 pencil screeners located consumers in the concourse of the mall. Aunt Jackie's is primarily sold
14 at retail, so in-person interviewing matches the primary means of sales and also allows
15 respondents to view and touch an entire bottle, just as if they were at retail.

34. Respondents who agreed to participate were taken to an interviewing facility where they
were interviewed by a professional interviewer who typed their answers into an online
questionnaire. As shown by Exhibit 3, interviews were conducted at 13 shopping malls, including
locations in each region of the country.¹¹

20 South: Washington DC; Spartanburg, SC; Atlanta, GA; Dallas, TX; Charlotte, NC;
21 Tallahassee, FL; Houston, TX

22 || Northeast: Philadelphia PA; New York NY

23 || Midwest: Chicago, IL; St. Louis, MO

24 West: Los Angeles, CA; San Fran

25 | 35 Prior to fielding a supervisor at each location part

As described later, the levels of confusion for the Aunt Jackie's test products measured in the survey were low even before accounting for the controls. These low measurements, in hindsight, make the controls unnecessary because the controls do not affect the conclusions of the survey.

²⁸ These regions match geographic regions established by the U.S. Census Bureau.

1 firm regarding the research design and methodology. Each survey location received detailed
2 written instructions for interviewers and supervisors, which are presented in Exhibit 4. The survey
3 and screening questionnaires are shown in Exhibit 5.¹²

4 36. After qualification, respondents who agreed to participate were taken to an interviewing
5 facility in the mall. Respondents were randomly assigned to either a test cell or a control cell.

6 37. At the beginning of the survey, respondents were given this instruction:

7 "For each of my questions, if you don't know or don't have an answer, please don't guess.
8 Just tell me you 'don't know' or 'don't have an answer' and we'll go on to the next
9 question."

10 38. Respondents were then shown the product and read this instruction:

11 "Here is a product that you may or may not have seen before. You may hold and examine
12 it, just as you would if you were at a retail location thinking of buying a product such as
13 this. Take as much time as you would normally when buying such a product."

14 39. Respondents could then handle and examine the product, just as if they were in a retail
15 store. After they examined the product, it was placed on the table and they were asked questions
16 to measure the same types of confusion as identified by the Plaintiffs in the Complaint.

17 40. The first series of questions measured confusion as to source. Question 2 asked, "Who do
18 you think makes or puts out this product?" Question 3 asked, "What makes you think that?
19 Anything else?"

20 41. Question 4 asked, "Are you aware of any other products or brands put out by the company
21 or person who makes or puts out this product? You may answer yes, no, or you don't know or
22 have no opinion." For those who answered yes to Question 4, Question 5 asked, "What other
23 products or brands do you think are put out by the company or person who makes this product?
24 Any others?" Question 6 asked, "What makes you think that? Anything else?"

25 42. The next set of questions measured confusion as to sponsorship or approval. Question 7
26 asked, "Do you think that whoever makes or puts out this product is sponsored or approved by

27 ¹² The survey questionnaire was administered by interviewers and not seen by respondents.
28 Exhibit 5 contains programming instructions that were not visible to interviewers.

1 another company or person, is not sponsored or approved by another company or person, or, you
2 don't know or have no opinion?" For those who answered yes, Question 8 asked, "What other
3 company or person do you believe sponsored or approved whoever makes the product I showed
4 you?" Question 9 asked, "What makes you think that? Anything else?"

5 43. The types of confusion measured by my survey have been measured by other confusion
6 surveys and are discussed in a number of respected sources.¹³ Also, the phrasing of questions in
7 my confusion survey is relatively standard for Eveready surveys. My survey questions mostly
8 asked about the "company or person," reflecting that the products in this matter are made by
9 companies with names that sound like individual people, such as Aunt Jackie's or Miss Jessie's.
10 Phrasing similar or identical to "company or person" has been used in other confusion surveys.¹⁴

11 44. The fielding of the confusion survey included a number of quality control measures, such
12 as the following:

- 13 i. The confusion survey was conducted by trained interviewers, who typed
14 respondents' answers directly into an online questionnaire. Computer-assisted
15 interviewing ensured that correct branching logic was followed in the survey.
- 16 ii. All bottles were marked on the bottom with a code number identifying the product
17 intended for that particular cell. Respondents were asked to read the number on
18 the bottom of the product they were given; their answer confirmed that the product
19 they saw was correct for that cell.
- 20 iii. The confusion survey was pre-tested. Seven interviews were conducted in
21 Palmdale, California, under the observation of a staff member from MMR, who
22 made sure that the interviews could be properly conducted and that the respondents

23 _____
24 ¹³ For example, the "sponsored or approved" language used in my survey is discussed in
25 "Likelihood of Confusion Studies and the Straightened Scope of Squirt," by Jerre B. Swann, *The
Trademark Reporter*, May-June 2008, p. 742. The language is also mentioned in *McCarthy on
Trademarks and Unfair Competition*, previously cited.

26 ¹⁴ For example, *Gallo Winery v. Gallo Cattle Company* involved a survey asking "What
27 individual, organization, or company..." (Ninth Circuit, 967 F.2d 1280, decided 1992). Similarly,
28 a survey in *Wuv's International, Inc. v. Loves Enterprises, Inc.*, 208 U.S.P.Q. 736 (D. Colo 1980)
used a question, "What company or person do you believe owns or operates this restaurant?" See
also *Essie Cosmetics v Dae Do International* 808 f.supp.952 1992.

1 could understand the questions.

2 iv. Qualifying responses to the confusion survey were hidden among other, non-

3 qualifying responses. This reduced the chances of a respondent guessing which

4 responses would qualify or not qualify for the survey.

5 v. Survey questions included “don’t know” options to discourage respondents from

6 selecting other responses that may not accurately represent their opinions.

7 vi. After the interviews, a separate validation survey was conducted by an

8 independent firm, Interviewing Service of America (ISA), of Van Nuys,

9 California.

10 45. The validation questionnaire is included as Exhibit 6. Consistent with accepted practices,

11 the validation interview confirmed that the interview actually took place and also confirmed key

12 qualification criteria.¹⁵ In total, 249 (54%) of all respondents were validated, meaning that the

13 validation interviewer reached the respondent and confirmed key criteria. The percentage of

14 interviews validated is well above that of guidelines, which recommend validation of 10% to 15%

15 of interviews.¹⁶

16 46. From the original base of 460 interviews completed, 20 (4%) were removed because of

17 questionable responses or lack of validation, leaving 440 respondents in the final database. This

18 database provides sufficient size to be considered reliable for analysis.

19 47. The next section describes the findings from my analysis of the survey data.

20

21 **FINDINGS FROM THE SURVEY**

22 48. To analyze the data from the confusion survey, I examined the verbatim responses to see

23 whether they indicated that respondents either confused the products they saw during the survey

24 with a product from Miss Jessie’s, or mistakenly thought that the products they saw came from a

25

26 ¹⁵ See J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, Fourth Edition,
27 Updated March, 2009, 32:170. Or see Paco Sport, Ltd., v. Paco Rabanne Parfums, U.S. District
Court, S.D. New York. No. 96 Civ. 1408(JES). Feb. 17, 2000.

28 ¹⁶ Shari Seidman Diamond, “Reference Guide on Survey Research” from *Reference Manual on*
29 *Scientific Evidence*, 3rd Edition, Federal Judicial Center, National Research Council, 2011, p. 412.

1 company or person that was somehow connected with Miss Jessie's.

2 49. Exhibit 7 provides all responses to all questions for all respondents. Verbatim responses
3 from the open-ended questions were assigned codes reflecting the themes inherent in the
4 comments, and the codes are listed in Exhibit 8. Some verbatim responses may reflect more than
5 one theme, in which case they were assigned more than one code. The coding was performed by
6 staff at MMR under my direction, and I personally checked codes for all responses.

7 50. Exhibit 9 presents cross tabulation tables from the data analysis. The cross tabulations
8 describe results by region (Table 1 of Exhibit 9), gender (Table 2), age (Table 3), and race (Table
9 4), showing that the demographics of the respondent base matches the targets described earlier.

10 51. The remainder of this section summarizes key results regarding confusion between Aunt
11 Jackie's and Miss Jessie's. The survey measured two types of confusion:

- 12 i. Confusion as to source: The percentage of respondents who referred to Miss
13 Jessie's in response to Question 2 or Question 5.
14 ii. Confusion as to sponsorship or approval: The percentage of respondents who
15 referred to Miss Jessie's in response to Question 8.

16 52. Question 2 asked respondents who they think made or put out the hair care product. The
17 data for Question 2 are summarized below in Table A below, for all four products measured.

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1 Table A: Confusion as to Source from Question 2¹⁷

2 Q.2 Who do you think made or put 3 out this product?	Curl Defining Cream		Hair Detangler	
	4 Test 5 (Aunt Jackie's)	6 Control 7 (Jane Carter)	8 Test 9 (Aunt Jackie's)	10 Control 11 (Taliah Waajid)
12 Miss Jessie's	13 0.9%	14 0.0%	15 0.0%	16 0.0%
17 Aunt Jackie's	18 64.5%	19 0.0%	20 58.9%	21 0.9%
22 Jane Carter/Jane Carter Solutions	23 0.0%	24 56.3%	25 0.9%	26 0.0%
27 Taliah Waajid/Black Earth	28 0.9%	29 0.0%	30 0.0%	31 51.9%
32 Dr. Miracle	33 0.9%	34 0.0%	35 0.9%	36 0.0%
37 African Pride	38 0.9%	39 0.9%	40 0.0%	41 0.9%
42 Carol's Daughter	43 0.9%	44 1.8%	45 0.0%	46 0.0%
47 Revlon	48 1.8%	49 0.0%	50 2.7%	51 0.0%
52 Dark & Lovely	53 0.9%	54 0.9%	55 0.9%	56 0.9%
57 African-American/black person	58 2.7%	59 1.8%	60 1.8%	61 4.7%
62 Other	63 11.8%	64 14.3%	65 12.5%	66 22.6%
67 Don't know/No opinion	68 15.5%	69 24.1%	70 21.4%	71 17.9%

15
16 53. As can be seen in Table A, among respondents who saw the curl defining cream, the
17 percentage mentioning Aunt Jackie's was 65% and 59% in the two test cells, versus 0% and 1% in
18 the two control cells. The percentage of respondents mentioning Miss Jessie's was very low, with
19 a single respondent mentioning Miss Jessie's in response to the curl defining cream, and no
20 respondents mentioning Miss Jessie's in response to any other product. The single respondent
21 who mentioned Miss Jessie's was respondent 25, who said "Miss Jessie or Carols Daughter."

22 54. Respondents who saw Aunt Jackie's mentioned other brands, such as Dr. Miracle, African
23 Pride, Carol's Daughter, and Revlon. Many of the other brands mentioned, such as Dr. Miracle,
24 African Pride, Carol's Daughter, and Dark & Lovely are marketed at least in part to African
25 Americans.

26 55. Some respondents mentioned an unspecified African-American or black person in their

27
28 ¹⁷ Based to all respondents.

1 verbatim answers.¹⁸ These included comments such as “something an African American made”
2 (respondent 20), “a black person” (respondent 65), “Some African American company or an
3 African person” (respondent 106), “an African black lady as a specialist” (respondent 165), “An
4 African American puts this product out” (respondent 193), “African Americans” (respondent 243),
5 or “I don't know but I think it's made by a black person” (respondent 411). While these answers
6 do not mention specific brands, they are reasonable answers to a question asking who made the
7 product, particularly when the product shows a company name that may be African American, or a
8 picture of a person who may be African American.

9 56. Confusion as to source was also measured in Questions 4 and Question 5. Question 4
10 asked whether the respondent was aware of any other products or brands put out by the company
11 or person who makes this product. The data from Question 4 are summarized in Table B below.

12 **Table B: Confusion as to Source from Question 4**

Q.4 Are you aware of any other products or brands put out by the company or person who makes or puts out this product?	Curl Defining Cream		Hair Detangler	
	Test (Aunt Jackie's)	Control (Jane Carter)	Test (Aunt Jackie's)	Control (Taliah Waajid)
Yes	8.2%	8.0%	9.8%	4.7%
No	81.8%	76.8%	78.6%	79.2%
Don't know/no opinion	10.0%	15.2%	11.6%	16.0%

18 57. As can be seen in Table B, the vast majority of respondents in all cells stated that they
19 were not aware of any other product or brands. The specific percentage saying no ranges from
20 77% to 82%, while the percentage answering yes to this question was only 5% to 10 %.

22 58. The follow up question, Question 5, asked those who answered yes what other products or
23 brands are made by the company or person who makes the product they saw. The data from
24 Question 5 are summarized in Table C below.

25 >>

26 >>

27 18 Verbatim responses are listed in this report as typed by interviewers, with some capitalization
28 adjusted to match this report.

1 Table C: Confusion as to Source from Question 5¹⁹

Q.5 What other products or brands do you think are put out by the company or person who makes this product?	Curl Defining Cream		Hair Detangler	
	Test (Aunt Jackie's)	Control (Jane Carter)	Test (Aunt Jackie's)	Control (Taliah Waajid)
Miss Jessie's	0.9%	0.0%	0.0%	0.0%
Aunt Jackie's	0.9%	0.0%	1.8%	0%
Shampoo/conditioner/other hair care product	4.5%	6.3%	6.3%	3.8%
Other	1.8%	1.8%	0.9%	0.9%
Don't know/No opinion	0.0%	0.0%	0.9%	0.0%

11 59. As Table C shows, very few respondents mentioned specific brands in response to this
 12 question. Of the brands mentioned, 1% of respondents who saw Aunt Jackie's curl defining cream
 13 mentioned Miss Jessie's in response to this question, as did 2% of respondents who saw Aunt
 14 Jackie's hair detangler. These three respondents said "Curl La La Gel" (respondent 179), "House
 15 of Cheathem, Inc" (respondent 228), and "Aunt Jackies shampoo" (respondent 449).

16 60. Only 1% of respondents who saw Aunt Jackie's curl defining cream mentioned Miss
 17 Jessie's in response to this question. This represents one respondent, who said, "Miss Jessie's Hair
 18 Products just like it." (respondent 371). No respondents in any other cell mentioned Miss Jessie's
 19 in response to this question.

20 61. For all cells combined, 23 respondents gave responses related to shampoo, conditioner, and
 21 other hair care products, without any brand specification. Examples are: "shampoo and
 22 conditioner" (respondent 8), "Hair gels/hair color\hair grease\shampoo" (respondent 55), "gel and
 23 mouse" (respondent 74), "you know like shampoo or conditioner or mouse other leave in hair
 24 products for the African community" (respondent 84), "shampoo and conditioner and also hair
 25 grease" (respondent 184), "Relaxers, oil sheens, hair jams and gels. hot oil treatments"
 26 (respondent 271), and "hair relaxers and other hair care products" (respondent 334). Although

27
 28 ¹⁹ Based to all respondents.

1 they do not mention specific brands, these are reasonable answers to a question asking what other
2 products or brands are put out by the company that makes the hair care product they were shown.

3 62. The final set of questions asked about confusion as to sponsorship or approval. Question 7
4 asked whether whoever makes or puts out the product is sponsored or approved by another
5 company or person. The data from Question 7 are summarized in Table D below.

6
7 **Table D: Confusion as to Sponsorship or Approval from Question 7**

Q.7 Do you think that whoever makes or puts out this product...	Curl Defining Cream		Hair Detangler	
	Test (Aunt Jackie's)	Control (Jane Carter)	Test (Aunt Jackie's)	Control (Taliah Waajid)
Is sponsored or approved by another company or person	23.6%	23.2%	23.2%	29.2%
Is <u>not</u> sponsored or approved by another company or person	27.3%	20.5%	24.1%	16.0%
Don't know/no opinion	49.1%	56.3%	52.7%	54.7%

8
9
10 63. As can be seen in Table D, for each of the four products, only 23% to 29% thought that the
11 product they saw was sponsored or approved by another company or person. The percentage who
12 thought the product was sponsored or approved does not appear to be higher for respondents who
13 saw the Aunt Jackie's test products than for those who saw the two control products.

14
15 64. Confusion as to sponsorship or approval is measured by the percentage of respondents who
16 both believe that the makers were sponsored or approved by someone, and mentioned Miss
17 Jessie's in Question 8 as the source of the sponsorship or approval. Question 8 asked respondents
18 who they think sponsored or approved whoever makes the product they saw. The results from that
19 question are summarized below in Table E.

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24 >>

1 Table E: Confusion as to Sponsorship or Approval from Question 8²⁰

Q.8. What other company or person do you believe sponsored or approved whoever makes the product I showed you?	Curl Defining Cream		Hair Detangler	
	Test (Aunt Jackie's)	Control (Jane Carter)	Test (Aunt Jackie's)	Control (Taliah Waajid)
Miss Jessie's	0.0%	0.0%	0.9%	0.0%
Aunt Jackie's	3.6%	0.0%	3.6%	0.0%
Jane Carter/Jane Carter Solutions	0.0%	1.8%	0.0%	0.0%
Taliah Waajid/Black Earth	0.0%	0.0%	0.0%	8.5%
Dr. Miracle	0.0%	0.9%	1.8%	0.0%
African Pride	0.0%	0.9%	0.0%	0.9%
Carol's Daughter	0.0%	0.0%	0.9%	0.9%
Revlon	0.9%	0.9%	0.0%	0.0%
Olive Oil	0.9%	0.0%	0.9%	0.9%
Other	7.3%	10.7%	8.0%	11.3%
Don't know/No opinion	10.9%	9.8%	8.0%	7.5%

18 As can be seen in Table E, no respondents who saw Aunt Jackie's curl defining cream, and
 19 a single respondent who saw Aunt Jackie's hair detangler, were confused as to sponsorship or
 20 approval with Miss Jessie's. Respondents who saw the various products did mention a number of
 21 other brands, including Dr. Miracle, African Pride, Carol's Daughter, Revlon and Olive Oil.

22 The next section summarizes my conclusions from the survey data.

23 >>

24 >>

25 >>

26 >>

28 ²⁰ Based to all respondents.

DISCUSSION AND CONCLUSIONS

67. My confusion survey measures two different types of confusion between Aunt Jackie's and Miss Jessie's: confusion as to source, and confusion as to sponsorship or approval.

68. Table F below provides a summary measure reflecting all confusion questions. The table excludes double counting by counting each respondent only once, even if they mentioned Miss Jessie's in more than one question.

Table F: Summary of All Measured Confusion²¹

Type of Confusion	Defining Curl Cream			Hair Detangler		
	Test (Aunt Jackie's)	Control (Jane Carter)	Net	Test (Aunt Jackie's)	Control (Taliah Waajid)	Net
Confusion as to source (Question 2, who makes or puts out the product)	0.9%	0.0%	0.9%	0.0%	0.0%	0.0%
Confusion as to source (Question 5)	0.9%	0.0%	0.9%	0.0%	0.0%	0.0%
Confusion as to sponsorship or approval (Question 8)	0.0%	0.0%	0.0%	0.9%	0.0%	0.9%
All measured confusion	1.8%	0.0%	1.8%	0.9%	0.0%	0.9%

69. As shown in Table F, the gross level of all measured confusion between Aunt Jackie's and Miss Jessie's is 1.8% (before the control) for curl definer. The matched control cell measurement is 0.0%, so the net level of all measured confusion for curl definer is 1.8% (after the control).

70. The gross level of all measured confusion between Aunt Jackie's and Miss Jessie's is 0.9% for hair detangler. The matched control cell confusion is 0.0%, so the net level of all measured confusion is 0.9% for hair detangler.

71. My understanding is that the measured level of confusion required to find a significant likelihood of confusion depends on the matter. Professor McCarthy, surveying a variety of cases, suggests that, "Generally, figures in the range of 25% to 50% have been viewed as solid support for a finding of a likelihood of confusion." He also states that, "Figures below 20% become

²¹ Tables F and G exclude double counting. If a respondent mentioned a brand in one question, she was not counted as confused more than once, even if she mentioned the brand in subsequent questions.

1 problematic because they can only be viewed against the background of other evidence weighing
2 for and against a conclusion of likely confusion.”²² My experience is that the net measurements
3 for likelihood of confusion in Table F are below levels that are typically considered significant.

4 72. To put these measurements in perspective, Table G summarizes all measured confusion for
5 brands mentioned by respondents other than Aunt Jackie’s and Miss Jessie’s. As with Table F,
6 Table G summarizes confusion across questions 2, 5, and 8.

7 **Table G: All Measured Confusion for Other Brands**
8 **(Excludes Aunt Jackie’s and Miss Jessie’s)**

9 Total confusion for other brands mentioned in Questions 2, 5, and 8	Curl Defining Cream		Hair Detangler	
	10 Test (Aunt Jackie's)	Control (Jane Carter)	Test (Aunt Jackie's)	Control (Taliah Waajid)
Jane Carter/Jane Carter Solutions	0.0%	N/A	0.9%	0.0%
Taliah Waajid/Black Earth	0.9%	0.0%	0.0%	N/A
Dr. Miracle	0.9%	0.9%	2.7%	0.0%
African Pride	0.9%	1.8%	0.0%	0.9%
Carol's Daughter	0.9%	1.8%	0.9%	0.9%
Revlon	2.7%	0.9%	2.7%	0.0%
Olive Oil	0.9%	0.0%	0.9%	0.9%
Dark & Lovely	0.9%	0.9%	0.9%	0.9%

18 73. As can be seen in Table G, a number of other brands were mentioned, also at low levels,
19 but about as often as Miss Jessie’s. The brands listed in Table G may have been mentioned
20 because they were top of mind for consumers, or because they have similarities with the types of
21 brands, products, or packages in the survey. No matter the reason, Table G shows that the
22 products tested from Aunt Jackie’s, Jane Carter, and Taliah Waajid bring to mind other brands as
23 often as or more often than Miss Jessie’s.

24 74. In my opinion, none of the levels of confusion for Miss Jessie’s in Table F, or for other
25 brands in Table G, are sufficiently high to be considered significant.

27 ²² J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, Fourth Edition,
28 Updated March, 2009, 32:188 “Likelihood of confusion—Percentage figures in the cases—
Evidence of a likelihood of confusion”.

1 I declare under penalty of perjury under the laws of the United States that the foregoing is true and
2 correct to the best of my belief.

3

4 Executed in Encino, California, on February 4, 2013.

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8 Dr. Bruce R. Isaacson

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Job : 64
Date: 2/25/2013
Time: 9:43:05 AM

**Exhibit 1:
Dr. Bruce Isaacson CV and Testimony Experience**



16501 Ventura Boulevard, Suite 601, Encino, CA 91436 • Phone (818) 464-2400 • Fax (818) 464-2399 • www.mmrstrategy.com

DR. BRUCE R. ISAACSON, DBA, MBA

Summary of Qualifications

- Expertise in surveys, marketing, and strategy.
- Experience in intellectual property matters.
- Doctorate and MBA, Harvard Business School; Bachelor of Science in Engineering, Northwestern University.

MMR Strategy Group, Encino, CA **PRESIDENT**

2005 - Present

MMR provides surveys, analysis, and consulting to measure the attitudes and behaviors of customers and prospective customers.

- MMR helps commercial clients grow by using marketing research and consulting to develop marketing and sales strategies. **MMR's commercial clients** have included Farmers Insurance Group, Smart & Final, Alberto-Culver, Nestle USA, Sega Entertainment USA, Cigna, Oreck, The Goodyear Tire & Rubber Company, The Coca-Cola Company, and other companies.
- MMR surveys and testimony provide evidence for intellectual property litigation and claim substantiation. **MMR's legal clients** have included Baker & Hostetler, Munger, Tolles & Olson; Farella, Braun + Martel; Shook, Hardy & Bacon; Baker & McKenzie, and other firms.
- As President, I design studies, manage research projects, and provide consulting for clients. I have conducted hundreds of surveys during my career.
- I regularly provide surveys, testimony, and rebuttals for intellectual property litigation and claim substantiation matters. I have experience with a wide variety of authorities, including Federal Court, the Trademark Trial and Appeal Board, and other venues as well.
- I frequently speak and write on topics relating to marketing, surveys, and strategy.

Education

- Doctor of Business Administration in Marketing, **Harvard Business School**, 1995. Awarded Dean's Doctoral Fellowship.
- MBA with High Distinction, **Harvard Business School**, 1991. Graduated in top 5% of class as a Baker Scholar.
- Bachelor of Science in Engineering with focus on Regional Development, Northwestern University Technological Institute, 1985.

Prior Professional Experience

Fairview Company, Calabasas, CA
MANAGING DIRECTOR

2002 - 2004

- **West Coast Practice Leader of Executive Development for Monitor Group.**
Designed and managed marketing and strategy executive education programs. Developed curriculum, served as lead faculty on programs for Fortune 100 clients.
- **Consulted with clients in technology, software, and financial services.**
Provided consulting services in marketing and strategy.

Intuit/Digital Insight, Calabasas, CA
SENIOR VICE PRESIDENT FOR PRODUCTS, MARKETING, AND ALLIANCES

2001 - 2002

- **Managed business lines for \$130 million provider of outsourced banking services/software.**
Directed marketing, strategy, alliances, mergers, acquisitions, resellers, and pricing for 9 business lines. Managed \$29 million budget and staff of 40.
- **Built product management and strategy functions.**
Set priorities for \$22 million R&D budget. Directed \$51 million acquisition and post-merger conversion of 150 new clients.

Move, Inc., Westlake Village, CA
PRESIDENT, HOME SERVICES

1999 - 2001

- **Founded home services division for software/services provider to real estate industry.**
Directed business unit for new division. Built alliances with associations including National Association of Homebuilders and American Institute of Architects.

PHH Corporation (NYSE: PHH), Mortgage Division, Mount Laurel, NJ
VICE PRESIDENT, MARKETING

1997 - 1999

- **Directed marketing for \$26 billion outsourced mortgage services division.**
Company provided private label loans and loan servicing for customers and partners, including Wells Fargo, USAA, Coldwell Banker, Century 21. Served on 14-member Executive Committee. Managed \$14 million budget and 60 people in marketing, research, public relations, advertising, strategic planning, business development and e-commerce.
- **Created collateral for selling, processing, and closing loans distributed to 750,000 customers annually.**
Redesigned sales materials used by 150-person sales force. Created point-of-sale materials and placed in 1,600 real estate offices nationwide. Negotiated co-marketing deals.
- **Built online platform to originate, close and service mortgages.**
Created co-branded system used by 1,400 partners to originate \$700 million in mortgages in 2000. Integrated system with more than 2,000 sales and customer service reps.

Boston Consulting Group, Chicago, IL
CONSULTANT

1995 to 1997

- **Consulted in marketing, strategy and distribution for \$1 billion international strategy consulting firm.**

Designed and rolled out database marketing program for international supermarket chain.

Developed purchasing strategy for \$3 billion consumer goods company.

Evaluated market strategy for \$800 million division of paper goods company.

Harvard Business School, Cambridge, MA
DEAN'S DOCTORAL FELLOW

1991 to 1995

- **Developed and implemented multi-year research project analyzing buyer-supplier alliances.**

Authored 14 publications including best-selling case studies and articles in distribution, sales, supplier management, purchasing, branding, new products. Taught in Babson College Executive MBA program.

E&J Gallo Winery, Modesto, CA
MBA INTERN

1990

- Summer intern at global winery. Developed packaging strategy, distribution and retailer incentive programs for the wine cooler category.

Long Wharf Trading Company, Danvers, MA
PRESIDENT & CO-FOUNDER

1986 to 1989

- **Co-founded company manufacturing high quality sewn products for advertising premiums.**
- Directed 30 employees. Clients included banks, universities, corporations, schools and museums. Company was featured with full-page story in *Inc. Magazine*.

Parsons Corporation/Barton-Aschman Associates, Evanston, IL
ASSOCIATE CONSULTANT

1985 to 1986

- **Conducted strategic and operations planning for public transportation systems at global construction and regional planning company.**
- Received *President's Award* for outstanding initiative and performance.

Honors, Appointments, Affiliations

- Member, American Marketing Association (AMA)
- Member, Counsel of American Survey Research Organizations (CASRO)
- Member, International Trademark Association (INTA)
- Member, Marketing Research Association (MRA)
- Editorial Board, *Journal of Business-to-Business Marketing*, 1994 – present
- Member, *The Trademark Reporter* Committee, International Trademark Association, 2010 - present
- Policy Advisory Board, Joint Center for Housing Studies at Harvard University, 1999 - 2001
- Winner, Doctoral Dissertation, Institute for Study of Business Markets, Penn State, 1994
- George S. Dively Award for Innovative Research, Harvard Business School, 1993
- George F. Baker Scholar, Harvard Business School (top 5% of class), 1991
- Dean's Doctoral Fellowship, Harvard Business School, 1993 -1995

Selected Speaking Engagements

Frequent speaker at industry conferences and client events on topics relating to marketing and strategy, including:

- Moderator (planned) for round table discussion entitled, “Using Survey Evidence for Claim Substantiation”, International Trademark Association Annual Conference, upcoming May, 2013.
- Panelist (planned) for multi-day conference entitled, “Advertising Claims Support: Case Histories and Principles”, conference hosted by The Institute for Perception, upcoming April, 2013.
- Moderated round table discussion entitled, “Replicating Marketplace Conditions in Trademark Surveys”, International Trademark Association Annual Conference, 2011.
- Moderated round table discussion entitled, “The Use of Surveys in Intellectual Property Litigation”, International Trademark Association Annual Conference, 2010.
- Faculty on panel at expert forum entitled, “Litigating & Resolving Advertising Disputes”, American Conference Institute, June, 2010.
- “The Use of Online Surveys in Intellectual Property Litigation”. Presentation to the National Advertising Division (NAD) Annual Conference, October, 2009.
- “The Death of the Focus Group: Non-Traditional Research to Create Deeper Customer Insight.” Presentation to American Marketing Association Annual Marketing Research Conference, September, 2008.
- “Understanding Your Customer and Making Tough Strategic Choices,” International Restaurant & Foodservice Show of New York, March, 2008.
- “Measuring Consumer Attitudes and Behaviors in Intellectual Property Litigation,” Continuing Legal Education (CLE) seminar presented to audiences including:
 - Orange County Bar Association, November 2007.
 - Baker Botts, LLP, March, 2008.
 - Amster, Rothstein & Ebenstein LLP, March, 2008.
 - Fulwider Patton, LLP, March, 2008.
- “Understanding Today’s Customers and Making Tough Choices – Lessons Learned From Starbucks,” Western Foodservice & Hospitality Expo, August, 2007.
- “What Can We Learn from Customer Satisfaction Studies?” Real Trends Marketing & Technology Expo, September, 2006.

Publications and Works in Process

The Quantity of Presidential Polls and the Quality of Marketing Research. *Green Book Blog*, October, 2012.

Playing Nice With Legal: How Research Can Help Keep Marketing Claims in Compliance. *Quirk's Marketing Research Review*, January, 2013.

Three Critical Questions to Evaluate Intellectual Property Surveys. *Intellectual Property Today*, September, 2012. Co-authors Professor Jonathan Hibbard and Professor Scott Swain.

Asking the Right Questions (in Litigation Surveys). *Intellectual Property Magazine*, October, 2012.

Conducting Litigation Surveys in an Online World. Manuscript in process with co-author, planning to submit for publication to *The Trademark Reporter*.

Why Online Consumer Surveys Can Be a Smart Choice in Intellectual Property Cases (with Professor Jonathan Hibbard and Professor Scott Swain). *Intellectual Property Law Newsletter* of the American Bar Association, Intellectual Property Law Section, May 2008.

Bose Corporation: The JIT II Program (A), (B), (C), and (D) (with Professor Roy Shapiro). Harvard Business School cases 9-694-001, -002, -003, and -004.

Bose Corporation: The JIT II Program Teaching Note. Harvard Business School teaching note 5-695-017.

Buyer-Supplier Relationships: Antecedents, Management and Consequences. Harvard Business School doctoral dissertation, 1996.

Goodyear: The Aquatred Launch (with Professor John Quelch). Harvard Business School case 9-594-106. Best seller.

Goodyear: The Aquatred Launch Teaching Note (with Professor John Quelch). Harvard Business School teaching note 5-595-016.

Industrial Marketing (with Professor V. Kasturi Rangan). In *AMA Management Handbook, Third Edition*, edited by John J. Hampton. New York: Amacom Books, 1994, pp. 2-101 to 2-108.

Managing Buyer-Supplier Relationships. Preface to *JIT II: Revolution in Buying and Selling*, edited by Lance Dixon and Anne Millen Porter. Newton, MA: Cahners Publications, Inc., 1994

Philip Morris: Marlboro Friday (A) and (B). Harvard Business School case 9-596-001 and -002.

Scope and Challenge of Business-to-Business Marketing (with V. Kasturi Rangan). Harvard Business School class note 9-594-125.

Vistakon: 1 Day Acuvue Disposable Contact Lenses (with Alvin J. Silk and Marie Bell). Harvard Business School case 9-596-087.

What is Industrial Marketing? (with Professor V. Kasturi Rangan). Harvard Business School class note 9-592-012.

Blogging and Commentary

I regularly write posts and white papers at MMRStrategy.com. Selected materials include:

Litigation

- “How to Measure False Advertising in a Litigation Survey” (November, 2012)
- “Using Surveys to Estimate Damages in Patent Infringement Matters” (October, 2012)
- “Apple vs. Samsung: Litigation Surveys as Evidence” (August, 2012)
- “What is the Theory Behind Your Lanham Act Survey?” (June, 2012)
- “Keyword Infringement Surveys: The New Frontier in Measuring Likelihood of Confusion” (June, 2012)
- “The Challenge of Replicating Marketplace Conditions in Intellectual Property Surveys” (May, 2012)

Marketing and Marketing Research

- “Sizing the Potential of a New Market or New Product” (white paper)
- “MaxDiff vs. Conjoint: Which is Better to Measure Consumer Preferences?” (white paper)
- “Ten Best Practices to Improve Your Concept and Product Tests” (white paper)
- “Using Choice-Base Market Segmentation to Improve Your Marketing Strategy” (white paper)
- “What Your Tracking Study Should Measure About Your Customers” (white paper)
- “Using Customer Journey Maps to Improve Your Customer Experience” (white paper)
- “How to Improve Your Usage and Attitude Study” (June, 2012)
- “Five Pitfalls of Market Segmentation and How to Avoid Them” (May, 2012)

Claim Substantiation

- “Critical Research Steps and Core Principles of Claim Substantiation” (white paper)
- “How Many Industries are Affected by Claim Substantiation?” (June, 2012)
- “Lessons in Claim Substantiation from the Pom Wonderful Decision” (May, 2012)
- “How Claim Substantiation Differs from Traditional Marketing Research” (May, 2012)

Selected Courses Taken in MBA and Doctoral Programs

- Economics and Finance, including topics such as Managerial Economics; Financial Reporting and Accounting; Business, Government, and the International Economy; Corporate Finance; Product Costing; Microeconomic Theory.
- Marketing and Strategy, including topics such as Marketing; Marketing Foundations Readings; New Products; Marketing Implementation; Service Management; Research Issues in Marketing; Buyer Behavior; Industrial Marketing and Procurement; Industry and Competitive Analysis; Communications.
- Sociology and Psychology, including Organizational Behavior; Human Resources; Social Behavior in Organizations; Readings in Administration (two courses); Management Policy and Practice.
- Statistics, including Statistical Inference; Social Network Analysis; Applied Data Analysis; Analyzing Covariance Structures.
- Research Methods and Research Design, including Doctoral Research Seminar; Research Design and Measurement; Design of Field Research in Organizational Behavior; Intervention Research and Action Science.

Dr. Bruce Isaacson Litigation Expert Witness Experience
January 2013

Cases in which Dr. Bruce Isaacson has testified as an expert, including written expert reports or testimony at deposition or trial, in the past four years.

Globefill Incorporated v. Elements Spirits, Inc. and Kim Brandi
U.S. District Court, Central District of California

Sun Pacific Group v. Paramount Group
American Arbitration Association, Commercial Arbitration Tribunal

Nicholas J. Gianino, Arnold Lee, and Lori Risman v. Alacer Corporation
U.S. District Court, Central District of California

Bruce Lee Enterprises, LLC v. A.V.E.L.A. Inc. and Leo Valencia, Urban Outfitters, Inc. and Target Corporation
U.S. District Court, Southern District of New York

FLIR Systems, Inc. v. Sierra Media, Inc. and Fluke Corporation
U.S. District Court, District of Oregon, Portland Division

Brian Graifman v. Trend Micro, Inc.
U.S. District Court, Northern District of California, San Jose Division

Chameleon Chair, Inc v Richwood Imports and Hall's Rental Services
U.S. District Court, Central District of California

Luxco, Inc. v Consejo Regulador Del Tequila, A.C.
United States Patent and Trademark Office, Trademark Trial and Appeal Board

Codonics, Inc. v. Datcard Systems, Inc.
U.S. District Court, Northern District of Ohio

Kristin Wells and Kimberly Nguyen v. Abbott Laboratories, Inc., EAS, Inc., et al
Superior Court of the State of California for the County of Los Angeles

Wham-O, Inc. v. Manley Toys, Ltd, et al.
U.S. District Court, Central District of California, Western Division

Nutro Products, Inc. v. Sergeant's Pet Care Products, Inc.
U.S. District Court, Middle District of Tennessee, Nashville Division

Clinique Laboratories, LLC v. Absolute Dental Cheyenne Inc.
U.S. Patent and Trademark Office, Trademark Trial and Appeal Board

Hansen Beverage Company, d/b/a Monster Beverage Company v. CytoSport Inc.
U.S. District Court, Central District of California

James and Mary Jordan et al v. The Scott Fetzer Company
U.S. District Court, Middle District of Georgia

Honestech, Inc., v. Sonic Solutions
U.S. District Court, Western District of Texas, Austin Division

Richard Dominguez v. UAL Corporation and United Airlines, Inc.
U.S. District Court, District of Columbia

JIPC Management, Inc. v. Incredible Pizza Co., Inc. and Incredible Pizza Franchise Group, L.L.C.
U.S. District Court, Central District of California

Larry Flynt and LFP Video Group v. Flynt Media Corp, Jimmy Flynt, and Dustin Flynt
U.S. District Court, Central District of California

Sara Lee Corporation v. Sycamore Family Bakery, Inc., and Leland Sycamore
U.S. District Court, District of Utah

Luv n' Care, Ltd and Admar International, Inc. v. Walgreen Co. and Kmart Corp.
U.S. District Court, Southern District of New York

Luv n' Care, Ltd and Admar International, Inc. v. Royal King Baby Product Co., Ltd.
U.S. District Court, Eastern District of Texas, Marshall Division

High Voltage Beverages, LLC v. The Coca-Cola Company
U.S. District Court, Western District of North Carolina

**Exhibit 2:
Product Photgrpahs**

Aunt Jackie's Knot On My Watch Instant Detangling Therapy



Front

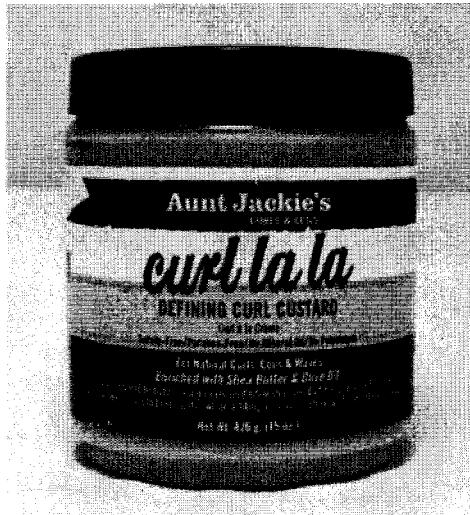


Side 1

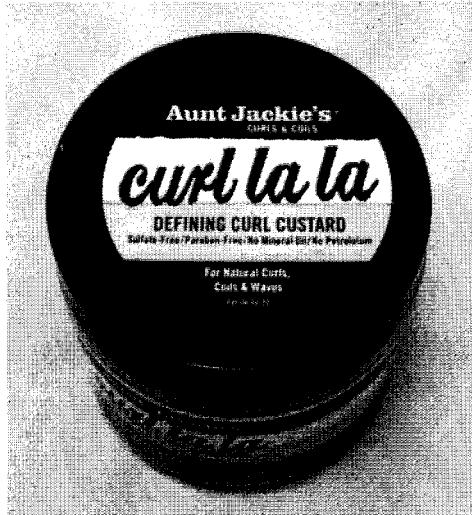


Side 2

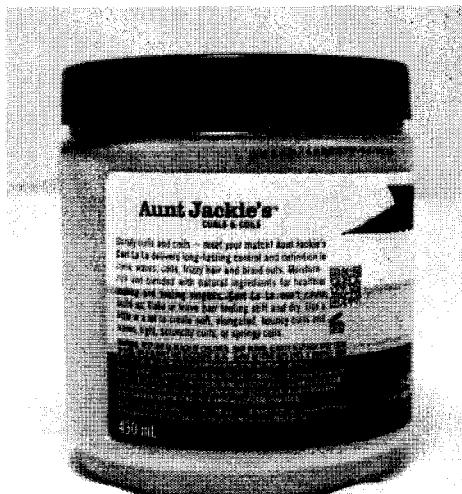
Aunt Jackie's Curl La La Defining Curl Custard



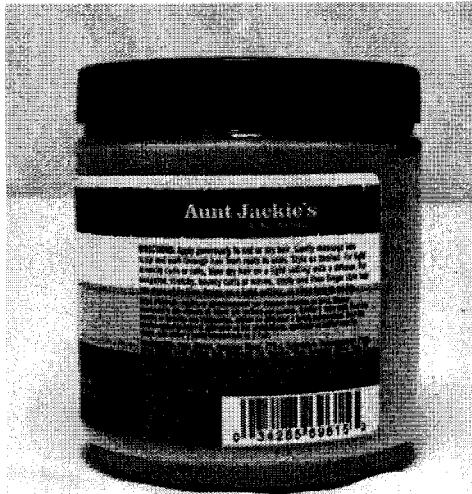
Front



Top



Side 1



Side 2

Taliah Waajid

The Great Detangler

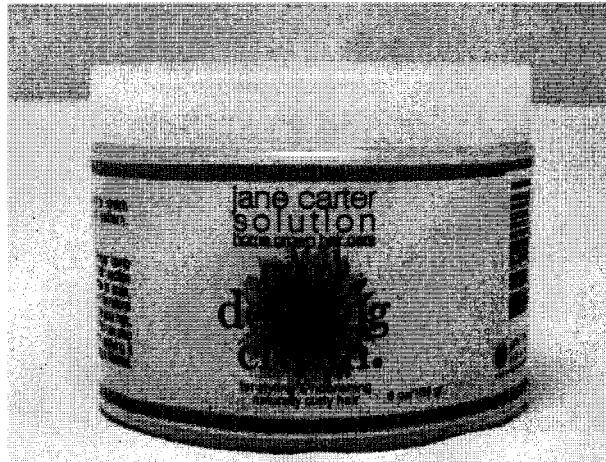


Front

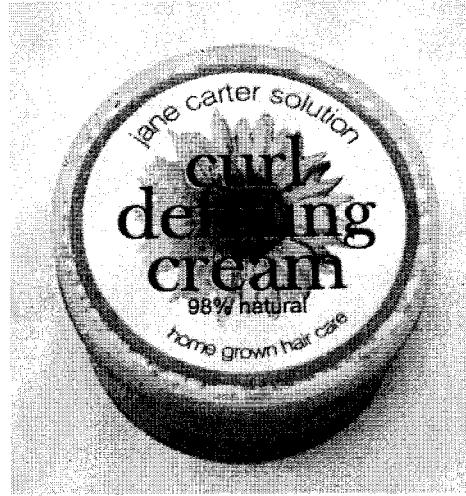
Side 1

Side 2

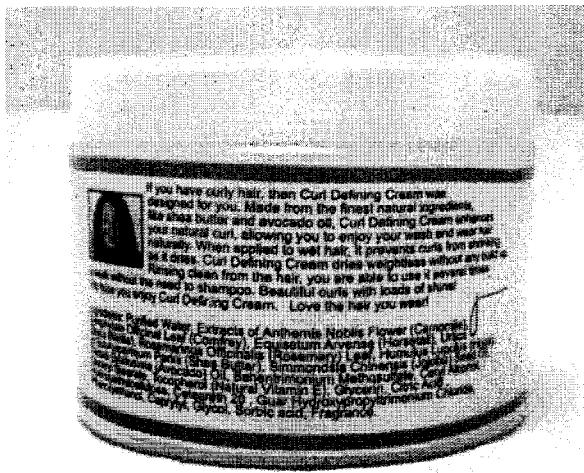
Jane Carter Solution
Curl Defining Cream



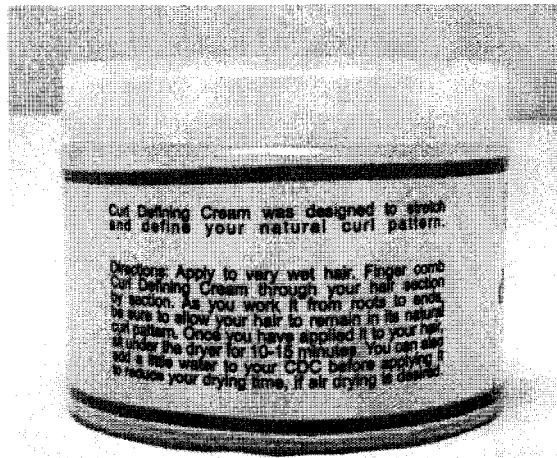
Front



Top



Side 1



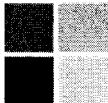
Side 2

**Exhibit 3:
Confusion Survey Interview Locations**

Confusion Survey Interview Locations

Market	Location
Atlanta, GA	Perimeter Mall
Charlotte, NC	Eastridge Shopping Centre
Chicago, IL	Fox Valley Mall
Dallas, TX	Valley View Mall
Houston, TX	Greenspoint Mall
Los Angeles CA	Antelope Valley Mall
New York, NY	Kings Plaza Mall
Philadelphia, PA	Franklin Mills Mall
St. Louis, MO	St. Louis Mills Mall
San Francisco, CA	Southland Mall
Spartanburg, SC	Westgate Mall
Tallahassee, FL	Tallahassee Mall
Washington, D.C.	Spotsylvania Towne Centre

Exhibit 4:
Confusion Survey Instructions for Interviewers and Supervisors



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Study #509-004
Hair Care Study
January 2013

INTERVIEWER INSTRUCTIONS

OVERVIEW

MMR Strategy Group is conducting a nationwide consumer survey about hair care product. Interviewers will administer a screener a representative sample of females ages 18 and older at your mall to identify whether they are eligible for the survey. To be eligible, the person must currently use and plan to purchase certain hair care products. Individuals also must satisfy other eligibility criteria which are outlined later in this document.

Individuals will be screened for eligibility at the mall, and eligible survey respondents will be taken to an interviewing room where they will be shown one package and then asked several questions about it. Eligible survey respondents who complete the survey will be given a cash incentive.

This is a four-cell study; each respondent will see and evaluate ONE product. Each product has a label on the bottom with the product code on it. Products and product codes are described later in this document.

BRIEFING

All personnel involved in the study must attend a personal briefing before working on this project. At the briefing, your supervisor will read through the Interviewer's Instructions along with you. All interviewers must do **at least one Practice Screener and one Practice Interview with another interviewer (including Practice Verification Page and Practice Certification Page)** during the briefing. The practice screeners and practice verification and certification pages are printed on colored paper.

On the questionnaire URL, select "Practice" on the first page to begin a practice interview. Only select "Live" for actual live interviews.

All Practice Screeners and Practice Interviews must be monitored and reviewed by the supervisor—and have any problems cleared up—before actual interviewing begins. It is your responsibility to be sure that you completely understand:

1. How to administer the paper screener
2. How to enter the screener responses
3. How to administer the main questionnaire
4. How and when to display the product
5. How and when to fill out the verification page
6. How and when to fill out the certification page

Each interviewer is to read his/her Interviewer Instructions and sign them. Each interviewer's signed instructions are to be stapled to his/her practice screener, practice verification page and practice certification page and returned at the end of the study.

SCREENING FOR ELIGIBILITY AND CONDUCTING INTERVIEWS

A representative sample of females age 18 or older at your mall will be screened for eligibility. Your supervisor has been provided with quotas.

Approaching Potential Respondents – You should approach and screen shoppers in a systematic manner (e.g., either every shopper or every nth shopper) until each quota group is filled. If you approach a group of shoppers, you should only screen and qualify one person in the group for the survey. You must screen for this project only. You may not "double screen" or "piggyback." For example, if the individual has been screened for another study, he/she is ineligible for this one. Also, if the individual lives in the same household as another person who was interviewed for this survey, he/she is not eligible.

DO NOT INTERVIEW ANYONE WITH A HEARING, LANGUAGE OR SIGHT DISABILITY

- **Screening Forms** – If someone you are screening is not eligible for this study, erase the responses and reuse the screener. All completed screening forms will be sent to MMR Strategy at the end of the study.
- **Interviewing Hours and Interviewing Quotas** – Your supervisor will assign your interviewing hours. Interviews will be conducted on different days at different times of the day, with most of the interviews being conducted in the evenings or weekends. A supervisor must be on site during all interviews. We have requested that each interviewer assigned to the project complete a similar number of interviews with eligible survey respondents. Give all completed interviews to your supervisor, even if you inadvertently complete more than the target number of interviews overall or for a particular quota group.

SCREENER AND QUESTIONNAIRE ADMINISTRATION

Your supervisor has been provided with the screening forms (for you to use to determine whether an individual is eligible for the survey), verification and certification pages (for respondents who complete the survey), and bottles of product. The bottles should remain covered with the cloths we provided when interviews are not being conducted.

Interviewer instructions are **CAPITALIZED AND PRINTED IN BOLD** on the screening form and survey program. Follow these instructions carefully. Do not read words in **BOLD CAPITAL LETTERS** to the survey respondent. Read each question in the screening form and questionnaire exactly as written and allow respondents as much time as he/she needs to answer before proceeding to the next question. Do not change the wording of any question, and ask only the questions included on the screening form and questionnaire. Do not "probe" for additional answers except when instructed to do so in the questionnaire (e.g., when the questionnaire instructs you to ask for "Any other reasons?")

You should not interpret specific items or instructions in the screening form or questionnaire. If asked to do so, you should indicate that you do not want to bias respondents' answers in any way. You may offer to reread a question and ask the survey respondent to use his/her best judgment. If you repeat a question, be sure to repeat the entire question.

RECORDING ANSWERS

When you record answers on the screening form and questionnaire, be sure that you record a respondent's entire answer. Always record a survey respondent's exact words and do not omit any words or part of a respondent's answer. If necessary, you may ask a respondent to repeat his/her entire answer to ensure that you have recorded it accurately.

Do not paraphrase or use abbreviations when recording answers. For example, a survey respondent may say "No, nothing else" when asked the question "Any other reasons?" If this occurs, record the survey respondent's exact words (e.g., do not write "nfi" to indicate no further information). Use proper punctuation and capitalization when recording verbatim answers. However, do not use parentheses when you record a survey respondent's answers. If you make an error on the screener or certification forms, you may cross something out with a single line, but do not erase or "white out" anything.

INTERVIEWER RESPONSIBILITIES AT THE END OF EACH INTERVIEW

At the end of each interview, review the screening form to ensure the following: (a) all applicable questions in the screening form, verification page and certification page were asked, (b) the person who was interviewed is eligible for the survey based on his/her answers to the screening form, and (c) you accurately recorded answers on the questionnaire and screening form and legibly recorded answers on the screener, (d) you covered the bottle with the cloth we provided.

VERIFICATION

We are requesting a telephone number from each survey respondent for verification purposes and your supervisor must verify that it is a working telephone number. Do not accept a pager number. For quality control purposes, MMR Strategy will attempt to contact by telephone all persons who were interviewed to confirm their participation.

CONFIDENTIALITY

Survey respondents' answers should be kept confidential at all times.

QUALITY CONTROL

You will be monitored throughout data collection to ensure that you follow the survey instructions, properly administer the screening form and the questionnaire, and record answers completely and accurately. If you have any questions or problems, contact your supervisor immediately and he/she will contact MMR Strategy.

QUOTA ASSIGNMENT/QUOTA LINK

Your quota will be assigned by your supervisor. A quota link will be emailed to your location to help keep track of completes by age and race. Everyone working on this project should have access to the quota link. Check the quota link before recruiting to ensure that you complete the full quota. The questionnaire link will terminate a respondent if a quota has been filled.

PRODUCTS AND PRODUCT CODES

The products included in the test are:

- Cell 1, Product code 31: Aunt Jackie's Curl La La
- Cell 2, Product code 32: Jane Carter Curl Defining Crème
- Cell 3, Product code 33: Aunt Jackie's Knot on My Watch
- Cell 4, Product code 34: Taliah Waajid The Great Detangler

ADMINISTERING THE SCREENER AND QUESTIONNAIRE

Screener

You will be screening for respondents from the mall floor to be interviewed. Qualified respondents are females age 18 or older who:

- Q. Are female
- QA. Are age 18 or older who meet the age quota
- QB. Selected African-American/Black or Hispanic as their race
- QC. Have not participated in a hair care study in the past 3 months
- QD. Use curl definer/curl defining crème and/or leave-in hair detangler least once a week
- QE. Are likely to purchase curl definer/curl defining crème or leave-in hair detangler in the next 90 days
- QF. Not employed in a sensitive industry
- QG/H. Have eyeglasses/contact lenses with them if needed
- QI. Are willing to participate

Main Questionnaire

- Escort the respondent into the facility.
- Bring respondent into the interview room. Open the Questionnaire URL.
- Select "Live" for live interviews. Select "Practice" if you are conducting a practice interview.
- Select your market.
- Read the interviewer introduction and click "Next"
- **Electronic Screener**
- Select the responses to Q.A - Q.I from the paper screener. The program will assign the cell number. If covered bottle or jar is not in the room, excuse yourself and get the right package. With the top of the product closed and the entire product completely covered, place the product in front of the respondent.
 - On each screen, verify that you have selected the correct response before clicking the "Next" button.
- NON-QUALIFYING RESPONSES WILL TERMINATE THE SURVEY AND THE RESPONDENT ID# WILL NO LONGER BE VALID. YOU ARE NOT ALLOWED TO GO BACK IN THE SURVEY.**
- **Main Questionnaire**
 - Remove the cloth covering the product. Display the product with the top closed and the front facing the respondent. Instruct respondent to examine the product. They may pick up the product to examine it and they may open the top to see or smell the product. Do not, however, allow them to touch the product. Do NOT specifically instruct the respondent to open or not open the product.
 - After respondent finishes examining the product, place product on table with the top closed and the front of the bottle or jar facing the respondent. The respondent may not pick up the product again.
 - Note that the order of certain responses will rotate. You must read the question and responses exactly as shown on the screen.

VERIFICATION AND CERTIFICATION PAGES

At the end of main questionnaire, the interviewer and respondent must fill out the verification and certification pages.

On the verification page, record the respondent's telephone number, name, and other contact information. The respondent ID is already printed on this page.

On the certification page:

1. Respondent reads and signs the appropriate space
2. Interviewer reads and signs the appropriate space
3. Staple the completed certification page to the back of the screener

If the respondent refuses to sign, his/her initials are acceptable.

Exhibit 4, Isaacson Expert Report

Page 3

EXHIBIT K

Study #509-004
Hair Care Study
January 2013

INTERVIEWER BRIEFING VERIFICATION FORM

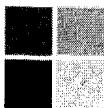
Interviewer Name (Please Print): _____

Interviewer Signature: _____

Date of Briefing: _____

Company: _____

Location: _____



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Study #509-004

Hair Care Study

January 2013

SUPERVISOR INSTRUCTIONS

OVERVIEW

MMR Strategy Group is conducting a nationwide consumer survey about hair care. Interviewers will administer a screener to a representative sample of females age 18 and older at your mall to identify whether they are eligible for the survey. To be eligible, the female must use and plan to purchase certain types of hair care products, and must also satisfy a variety of other eligibility criteria.

Individuals will be screened for eligibility at the mall, and eligible survey respondents will be taken to an interviewing room where they will be shown one bottle and then asked a series of questions about it. Eligible survey respondents who complete the survey will be given a cash incentive.

PRODUCTS AND PRODUCT CODES

This is a four-cell study; each respondent will see and evaluate ONE product. Each bottle or jar has a label on the bottom with the product code on it. The products included in the test are:

- Cell 1, Product code 31: Aunt Jackie's Curl La La
- Cell 2, Product code 32: Jane Carter Curl Defining Crème
- Cell 3, Product code 33: Aunt Jackie's Knot on My Watch
- Cell 4, Product code 34: Taliah Waajid The Great Detangler

INTERVIEWER EXPERIENCE

STAFFING: Each interviewer working on this study should not complete fewer than 5 interviews or more than 10.

- You will need experienced interviewers. Do not use any inexperienced or "new" interviewers.
- The interviewers should familiarize themselves with the stimuli before starting the interview.
- Interviewers who exhibit problems with survey administration or validation will be asked to stop working on the study and all completed interviews from the problem interviewer will be discarded.

BRIEFING

All personnel involved in the study must attend a personal briefing. You may schedule more than one training session if necessary to accommodate the schedule of staff working at your mall (e.g., if different staff work on weekends).

At the briefing, read through the Interviewer's Instructions along with the interviewers. Read it completely while reviewing the material with the interviewers. All interviewers must do **at least one Practice Screener and one Practice Interview (including Practice Verification and Certification Pages)** with another interviewer during the briefing. The practice screeners, practice verification and certification pages are printed on gold paper.

On the questionnaire URL, select "Practice" on the first page to begin a practice interview. Only select "Live" for interviews with respondents.

If you are the supervisor and you will conduct interviews for this study, you must also complete a practice interview and return it to MMR.

All practice screeners and practice interviews must be monitored and reviewed by the supervisor—and have any problems cleared up—before actual interviewing begins. It is your responsibility to be sure that each interviewer completely understands:

7. How to administer the paper screener
8. How to enter the screener responses
9. How to administer the main questionnaire
10. How and when to display the product
11. How and when to fill out the verification form
12. How and when to fill out the certification page

Each interviewer is to read his/her Interviewer Instructions and sign them. Each interviewer's signed instructions are to be stapled to his/her practice screener, practice verification page and practice certification page and returned at the end of the study.

DATA COLLECTION PERIOD AND INTERVIEWER QUOTAS

Interviewing will begin immediately after the training is completed and will be conducted over the next several days. Interviews should be conducted on different days and at different times of the day, with most of the interviews being conducted in the evenings or weekends. Each interviewer assigned to the project should complete a similar number of interviews with eligible survey respondents.

SCREENING FOR ELIGIBILITY

A representative sample of female shoppers at your mall will be screened for eligibility. Interviewers should screen female adults of all ages (age 18+). Interviewers should approach and screen shoppers in a systematic manner (e.g., either every shopper or every nth one). When an interviewer approaches a group of shoppers, the interviewer should only screen and qualify one person in the group for the survey. If an individual has been screened for another survey being conducted at your mall, he/she is not eligible for this survey. Also, if an individual lives in the same household as another person who was interviewed for this survey, he/she is not eligible to be interviewed. If a person does not qualify during the screening process, please erase the responses and reuse the screener.

SCREENER AND QUESTIONNAIRE ADMINISTRATION

You have been provided with screeners and two bottles/jars of each of the four products. The bottles/jars should be covered with the cloths provided when interviews are not being conducted. The interview will be conducted online by an interviewer.

The interviewer will bring the respondent into the room and will enter the screener responses into the program. The program will assign the cell. The products may be kept in the interviewing room, with the tops closed and the entire product completely covered, or the products may be kept in another room in the facility. If the product is not in the room, the interviewer will excuse him/herself, get the assigned product, and bring it into the interviewing room with the top closed and the entire product completely covered. At the beginning of the main interview, the interviewer will be instructed to uncover the product and allow the respondent to pick up the bottle or jar to examine it. (**The respondent is allowed to open the package to see or smell the product; however DO NOT SPECIFICALLY INSTRUCT THE RESPONDENT TO OPEN OR NOT OPEN THE PRODUCT.**)

When the respondent is finished looking at the product, the interviewer should place it on the table with the top closed and the front label facing the respondent; the respondent cannot pick up the product again.

Interviewer instructions are printed in **BOLD CAPITAL LETTERS** on the screening form and in the online survey. You should monitor interviewers to ensure they follow these instructions. Interviewers should not read words in **BOLD CAPITAL LETTERS** to the survey respondent. They should read each question in the screening form and the online questionnaire exactly as written and allow the survey respondent as much time as needed to answer before proceeding to the next question. Interviewers should not change the wording of any questions, and they ask only the questions included on the screening form and questionnaire. Interviewers should not probe for additional answers except when instructed to do so in the questionnaire (e.g., when the questionnaire instructs the interviewer to as for "Any other reasons?")

Interviewers should not interpret specific items or instructions in the screening form and questionnaire. If asked to do so, the interviewer should indicate that he/she does not want to bias sample member's responses in any way. The interviewer may offer to reread a question and ask the survey respondent to use his/her best judgment. If the interviewer repeats a question, he/she should repeat the entire question.

RECORDING ANSWERS

When interviewers record survey respondents' answers to open-ended questions, they should record a survey respondent's exact words and not omit any words or part of a respondent's answer. If necessary, an interviewer may ask a respondent to repeat his/her entire answer to ensure that the answer was accurately recorded.

Interviewers must not paraphrase or use abbreviations when recording answers. For example, a survey respondent may say "No, nothing else" when asked the question "Any other reasons?" If this occurs, the interviewer should record the survey respondent's exact words (e.g., he/she should not write "nfi" to indicate no further information). Interviewers should use correct punctuation and capitalization when recording verbatim answers. However, they should not use parentheses when recording survey respondents' verbatim answers.

SUPERVISION AND SUPERVISOR QUALITY CONTROL

A supervisor must be on site during all interviews and there should be ongoing monitoring throughout the study to ensure that the screening forms and questionnaires are administered according to the Interviewer Instructions and the instructions in the survey. An on-site supervisor should review completed screening forms to ensure the following:

- a. All screening questions were answered;
- b. Each person who was interviewed about the bottle is eligible based on his/her answers in the screening form;
- c. All applicable items in the screening form were asked, and the interviewer accurately and legibly recorded the respondent's answers on the survey materials;
- d. The verification form was completed and signed;
- e. The interviewer signed the certification form.

After the on-site supervisor has completed his/her review and ensured that the interview was conducted properly, he/she should sign the certification form.

VERIFICATION PAGE

We must have a telephone number from each survey respondent for verification purposes, and a supervisor must verify that this is a working telephone number. Pager numbers are not acceptable. For quality control purposes, MMR will attempt to contact by telephone all persons who were interviewed to confirm their participation. Email the verification pages to MMR every day. Staple completed verification page to back of the screener.

CERTIFICATION PAGE

At the end of the main questionnaire, the interviewer and respondent must fill out the certification page.

1. Respondent reads and signs the appropriate space
2. Interviewer reads and signs the appropriate space
3. Staple the completed certification page to the back of the screener

If the respondent refuses to sign, his/her initials are acceptable.

DAILY REPORTING

A log of completed interviews should be e-mailed to Debbie Lesnick (dlesnick@mmrstrategy.com) daily. Also, email the verification form to Debbie every day. The fax number is 818-464-2399.

SHIPPING INSTRUCTIONS

Please keep all materials until instructed to return them to MMR. Do not dispose of any unused materials. When instructed, please send back all completed materials in the original packaging via FedEx. We will provide you with our FedEx number. Include all completed screeners, verification forms, certification forms, practice screeners, and product to: Debbie Lesnick

MMR Strategy Group
16501 Ventura Blvd., Suite 601
Encino, CA 91436

VALIDATION

You are not to phone validate, MMR will independently validate each interviewers work.

SCHEDULE

Interviewing begins on Wednesday, January 23 and must be completed by Sunday, January 27. We MUST complete this on Sunday.

STUDY MANAGEMENT

This study is being managed by Debbie Lesnick at MMR Strategy Group. If there are any questions or problems please contact her directly:

Office: (818) 464-2404 Cell: (818) 635-7237 Fax: (818) 464-2399 dlesnick@mmrstrategy.com

Study #509-003
Hair Care Study
January 2013

SUPERVISOR BRIEFING VERIFICATION FORM

Supervisor Name (Please Print): _____

Supervisor Signature: _____

Date of Briefing: _____

Company: _____

Location: _____

**Exhibit 5:
Confusion Survey Screener and Main Questionnaire**

MMR Strategy Group
Study #509-004
January 2013
FINAL

RESPONDENT ID #

Hair Care Study
Screener EV

NOTE: Fill Out This Section After Respondent Qualifies

Location	Cell
	Cell 1 <input type="checkbox"/>
	Cell 2 <input type="checkbox"/>
	Cell 3 <input type="checkbox"/>
	Cell 4 <input type="checkbox"/>

SIGHT SCREEN FOR AFRICAN AMERICAN/BLACK OR HISPANIC FEMALES 18 YEARS OF AGE OR OLDER

Hello, I'm _____ on behalf of MMR, a nationwide market research organization. We're conducting a survey and I'd like to ask you a few brief questions. We are doing this for research purposes only and are not selling anything. We are only interested in your opinions.

NOTE: DO NOT CONTINUE INTERVIEW IF RESPONDENT HAS A HEARING, LANGUAGE OR OBVIOUS VISUAL PROBLEM.

GENDER: RECORD BY OBSERVATION

Female (CONTINUE)

Male (TERMINATE)

A. Please tell me which of the following groups includes your age? (READ LIST) (RECORD ONE RESPONSE)

Under 18 years..... (TERMINATE RESPONDENT. RECORD TERMINATION & TALLY. ERASE AND RE-USE SCREENER)

18 to 34 years (CONTINUE IF QUOTA NOT FILLED; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER)

35 to 54 years (CONTINUE IF QUOTA NOT FILLED; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER)

55 years and over (CONTINUE IF QUOTA NOT FILLED; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER)

Terminate Q.B: Under 18 years

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Terminate Q.B: Over Quota 18 to 34 years

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Terminate Q.B: Over Quota 35 to 54 years

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

Terminate Q.B: Over Quota 55 years and over

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

- B. Please tell me which of the following best describes your ethnicity. You may choose one response or more than one. (READ LIST) (ALLOW MULTIPLE RESPONSES. "DON'T KNOW" AND "PREFER NOT ANSWER" SINGLE RESPONSE)

African American or Black..... (CONTINUE IF QUOTA NOT FILLED; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER)

Hispanic (CONTINUE IF QUOTA NOT FILLED; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER)

Caucasian or White (IF ONLY CHOICE, TERMINATE RESPONDENT. RECORD TERMINATION & TALLY ERASE AND RE-USE SCREENER)

Asian (IF ONLY CHOICE, TERMINATE RESPONDENT. RECORD TERMINATION & TALLY ERASE AND RE-USE SCREENER)

Other (IF ONLY CHOICE, TERMINATE RESPONDENT. RECORD TERMINATION & TALLY ERASE AND RE-USE SCREENER)

Don't know (TERMINATE RESPONDENT. RECORD TERMINATION & TALLY ERASE AND RE-USE SCREENER)

Prefer not to answer..... (TERMINATE RESPONDENT. RECORD TERMINATION & TALLY ERASE AND RE-USE SCREENER)

[MUST CHOOSE "AFRICAN AMERICAN OR BLACK" AND/OR "HISPANIC" IN Q.B TO CONTINUE;
OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER]

Terminate Q.B: Respondent not African American or Black or Hispanic																			
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20

Terminate Q.B: Yes																			
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20

- D. Which of the following types of hair care products do you use at least weekly? For each product I read, you may answer yes, I use it at least weekly; no, I do not use it at least weekly; or you don't know. (READ LIST) (RECORD ONE RESPONSE FOR EACH)

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
Moisturizing shampoo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Curl definer or curl defining crème	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hair spray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leave-in hair detangler	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[MUST RESPOND YES TO "CURL DEFINING PRODUCT" OR "LEAVE-IN HAIR DETANGLER" IN Q.D TO CONTINUE; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER]

Terminate Q.D: Respond "No" or "Don't Know" to both "Curl Defining Product" and "Leave-In Hair Detangler"																			
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20

- E. Do you think you are likely to purchase any of the following types of hair care products in the next 90 days? You may answer yes, no, or you don't know. (READ LIST) (RECORD ONE RESPONSE FOR EACH)

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
Moisturizing shampoo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Curl definer or curl defining crème	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hair spray	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leave-in hair detangler	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[MUST RESPOND YES TO "CURL DEFINING PRODUCT" OR "LEAVE-IN HAIR DETANGLER" IN Q.E TO CONTINUE; OTHERWISE TERMINATE & TALLY. ERASE AND RE-USE SCREENER]

Terminate Q.E: Respond "No" or "Don't Know" to both "Curl Defining Product" and "Leave-In Hair Detangler"																			
01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20

[MUST RESPOND YES TO "CURL DEFINING PRODUCT" IN Q. D AND Q.E AND/OR YES TO "LEAVE-IN HAIR DETANGLER" IN Q.D AND Q.E TO CONTINUE; OTHERWISE TERMINATE]

- F. Do you or does anyone in your household work in any of the following industries? You may answer yes, no, or you don't know. (READ LIST) (RECORD ONE RESPONSE FOR EACH)

	<u>Yes</u>	<u>No</u>	<u>Don't Know</u>
1. Advertising or public relations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Marketing research	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. A company that produces or distributes hair care products	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[MUST RESPOND NO TO F1, F2, AND F3 TO CONTINUE; OTHERWISE, TERMINATE & TALLY.
ERASE AND RE-USE SCREENER.]

Terminate Q.F: Security screen F1 or F2 or F3 "Yes" or "Don't Know"

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

- G. Do you usually wear eyeglasses or contact lenses when you shop? (RECORD BELOW)

Yes (CONTINUE TO Q.H)

No..... (SKIP TO Q.I)

- H. Are you wearing your contact lenses or do you have your eyeglasses with you today? (RECORD BELOW)

Yes (CONTINUE TO Q.I)

No..... (TERMINATE RESPONDENT. RECORD TERMINATION & TALLY.
ERASE AND RE-USE SCREENER.)

Terminate Q.H: No

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

- I. I've asked you these questions to see if you are eligible for a very brief interview. Since I have something to show you, I'd like you to come with me into the interviewing facility. It will only take about 10 minutes of your time and I think you will find it interesting. For your time, we will give you \$_____ upon completing the survey. Will you participate in this survey? (RECORD BELOW)

Yes (CONTINUE)

No..... (TERMINATE RESPONDENT. RECORD TERMINATION & TALLY.
ERASE AND RE-USE SCREENER.)

Terminate Q.I: No

01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20

END OF SCREENER. ESCORT RESPONDENT TO INTERVIEWING AREA

IF "YES" TO "CURL DEFINER" IN Q.D AND Q.E RANDOMLY ASSIGN RESPONDENT TO CELL 1 OR CELL 2 AS NEEDED FOR QUOTA.

IF "YES" TO "LEAVE-IN HAIR DETANGLER" IN Q.D AND Q.E RANDOMLY ASSIGN RESPONDENT TO CELL 3 OR CELL 4 AS NEEDED FOR QUOTA.

IF "YES" TO BOTH "CURL DEFINER" AND "LEAVE-IN HAIR DETANGLER" IN Q.D AND Q.E RANDOMLY ASSIGN RESPONDENT TO CELL 1, 2, 3, OR 4 AS NEEDED FOR QUOTA.]

Verification Information

Q.103 Would you please tell me what your telephone number is? A supervisor will call you in the next week or so to verify that you participated in this interview and that you received your \$_____. Other than that, nobody will contact you.

a. Telephone number? Home (_____) _____

Cell (_____) _____

b. And your name?

First Name	Last Name
------------	-----------

c. And the city and state where you live?

City	State
------	-------

d. The best time for a supervisor to reach you?

Best Time

e. Respondent signature:

f. Those are all my questions. Thank you very much.

RESPONDENT ID # _____

Certification Page

At the completion of the interview, the interviewer must complete Q.104 to Q.105 below.

Q.104 Record Date of Interview: _____		
Q.105 I hereby certify that the information contained in this questionnaire is a true and accurate record of this respondent's comments as they were given to me.		
Interviewer Name	Interviewer Signature	Date
Now hand the completed screener and verification page to your on-site supervisor to inspect the documents and complete Q.106 below.		

ON-SITE SUPERVISOR:

Q.106 I hereby certify that I have:		
a. Reviewed the screener for completeness	<input type="checkbox"/>	
b. Checked the respondent's ID for age.....	<input type="checkbox"/>	
c. Checked the verification page for completeness.....	<input type="checkbox"/>	
d. Handed the respondent a \$__ token of appreciation	<input type="checkbox"/>	
e. Had the respondent sign the certification page	<input type="checkbox"/>	
f. Ensured that the interviewer has filled out and signed Q.104-Q.105.....	<input type="checkbox"/>	
g. Ensured that the product was correct.....	<input type="checkbox"/>	
h. Checked that the screener is attached to the verification and certification pages	<input type="checkbox"/>	
Supervisor Name	Supervisor Signature	Date

RESPONDENT:

Q.107 Please Read and Sign		
I acknowledge that I was interviewed on the date. During this interview, I was shown a hair care product and asked some questions. The answers I have given are truthful expressions of my opinions.		
# Respondent Id #	Respondent Signature	Date

MMR Strategy Group
Study #509-004
January 2013
Final

Respondent ID #

Hair Care Study
Main Questionnaire

Location:	ID #	Cells and Products
Philadelphia, PA	51	Cell 1
New York (Brooklyn), NY	52	Cell 2
Chicago (Aurora), IL	53	Cell 3
St. Louis, MO	54	Cell 4
Washington DC (Fredericksburg)	55	
Spartanburg, SC	56	
Atlanta, GA	57	
Dallas, TX	58	
Charlotte (Gastonia), NC	59	
Tallahassee, FL	60	
Houston, TX	61	
Los Angeles (Palmdale), CA	62	
San Francisco (Hayward), CA	63	

(GO TO ROOM WHERE THE PRODUCT IS ALREADY DISPLAYED. MAKE SURE THE PRODUCT MATCHES THE CELL ASSIGNED. NO OTHER PRODUCTS SHOULD BE VISIBLE IN THIS ROOM.
READ TO RESPONDENT:)

For each of my questions, if you don't know or don't have an answer, please don't guess. Just tell me you "don't know" or "don't have an answer" and we'll go on to the next question.

WHEN READY CONTINUE WITH Q.1A.

Q.1A Here is a product that you may or may not have seen before. You may hold and examine it, just as you would if you were at a retail location thinking of buying a product similar to this. Take as much time as you would normally when buying such a product.

Q.1B Please look at the bottom of the bottle. What number is on the bottom of the bottle?

- Cell 1: 31
Cell 2: 32
Cell 3: 33
Cell 4: 34

(IF NUMBER DOES NOT MATCH ASSIGNED CELL, TERMINATE AT Q.100.)

(AFTER RESPONDENT FINISHES EXAMINING THE PRODUCT, PLACE PRODUCT ON TABLE WITH THE TOP CLOSED AND THE FRONT OF THE BOTTLE FACING THE RESPONDENT. DO NOT ALLOW RESPONDENT TO HANDLE THE PRODUCT FOR THE REST OF THE INTERVIEW.)

- Q.2 Who do you think makes or puts out this product? (RECORD VERBATIM RESPONSE.
CONFIRM SPELLING IF NECESSARY.)

- Q.3 What makes you think that? (PROBE) Anything else? (RECORD VERBATIM RESPONSE)

- Q.4 Are you aware of any other products or brands put out by the company or person who makes or puts out this product? You may answer... (READ ANSWER CHOICES **SLOWLY**, RECORD **ONE RESPONSE BELOW**)

[ROTATE ANSWER YES/NO CHOICES BELOW WITH DON'T KNOW ALWAYS LAST:]

- | | | |
|---------------------------------------|--------------------------|-------------------|
| Yes, | <input type="checkbox"/> | (ASK Q.5 AND Q.6) |
| No | <input type="checkbox"/> | (SKIP TO Q.7) |
| Or, you don't know or have no opinion | <input type="checkbox"/> | (SKIP TO Q.7) |

- Q.5 What other products or brands do you think are put out by the company or person who makes this product? (PROBE) Any others? (RECORD VERBATIM RESPONSE)

- Q.6 What makes you think that? (PROBE) Anything else? (RECORD VERBATIM RESPONSE)

- Q.7 Do you think that whoever makes or puts out this product... (READ ANSWER CHOICES **SLOWLY**, RECORD **ONE RESPONSE BELOW**)

[ROTATE ANSWER "IS"/"IS NOT" CHOICES, WITH DON'T KNOW ALWAYS LAST.]

- | | | |
|--|--------------------------|-------------------|
| Is sponsored or approved by another company or person, | <input type="checkbox"/> | (ASK Q.8 AND Q.9) |
| Is not sponsored or approved by another company or person, | <input type="checkbox"/> | (SKIP TO Q.10) |
| Or, you don't know or have no opinion | <input type="checkbox"/> | (SKIP TO Q.10) |

- Q.8 What other company or person do you believe sponsored or approved whoever makes the product I showed you? (RECORD RESPONSE VERBATIM. CONFIRM SPELLING IF NECESSARY)